BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

JAMES A. STEADMAN Claimant VS. **SONNY HILL PONTIAC-BUICK-GMC TRUCK** Respondent AND **UNIVERSAL UNDERWRITERS INSURANCE** Insurance Carrier AND **KANSAS WORKERS COMPENSATION FUND**	)	Docket No. 187,798

ORDER

Claimant appealed from a July 12, 1994 Preliminary Hearing Order by Administrative Law Judge Steven J. Howard, which denied claimant's request for payment of temporary total disability compensation and medical benefits.

ISSUES

On appeal, claimant contends the Administrative Law Judge exceeded his jurisdiction in denying benefits because the evidence establishes the claimant sustained personal injury by accident arising out of and in the course of his employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments of the parties, the Appeals Board finds for purposes of preliminary hearing that claimant has not proven that his accident arose out of and in the course of his employment with respondent.

The facts in this case are generally not in dispute. Claimant was employed by respondent as a car salesman. On March 7, 1994, he stayed a little late in order to have

completed certain paperwork necessary to complete the lease of a vehicle to his girlfriend. At that time, claimant and his girlfriend were living together and claimant intended to take the paperwork home with him for her to sign. Claimant left the car dealership and headed home taking his usual travel route and was involved in an accident. The vehicle claimant was driving was a demonstrator supplied to him by the respondent.

Claimant argues that his accident arose out of and in the course of his employment because he was in the process of delivering contracts for the lease of a vehicle for the benefit of his employer. In addition, he was driving a demonstrator vehicle for the visibility and advertising benefit of his employer. Respondent argues that taking paperwork to a customer was not a part of claimant's job. Generally customers would come to the dealership to sign paperwork. Respondent admitted that occasionally a salesman would deliver paperwork to a customer, but this was very rare. In this case, claimant's taking the documents home was a convenience for everyone concerned. With regard to claimant's driving a demonstrator vehicle provided by respondent, it is noted that claimant was not required to drive a demonstrator, but was allowed to do so because he met his sales quota. Respondent further argues that because claimant was on his regular route home when the accident occurred, the trip was not for a business purpose. The presence of the papers did not affect claimant's operation of his vehicle, his route, nor did it transform his travel from "going and coming" to a business purpose.

The claimant must establish that he has sustained an accident and injury arising out of the employment and in the course of the employment. These are separate elements which must be proven in order for the claim to be compensable. Newman v. Bennett, 212 Kan. 562, 512 P.2d 497 (1973). In order to establish that the incident arose "out of" the employment, the claimant must show that there is some causal connection between the accidental injury and the employment. To do this, it must be shown that the injury arose out of the nature, conditions, obligations and incidents of the employment. Only risks associated with the work place are compensable. "In the course of employment" relates to the time, place and circumstances under which the accident occurred, and that the injury happened while the employee was at work at his or her employer's service. Hormann v. New Hampshire Ins. Co., 236 Kan. 190, 197, 689 P.2d 837 (1984).

The tests for determining whether an injury arose "out of" employment exclude any injury that is not fairly traceable to the employment and "'not coming from a hazard to which the workman would have been equally exposed apart from the employment.'" Newman, at 567. In this case, claimant would have been traveling the same route regardless of whether he was carrying the papers home and, thus, would have been equally exposed to the danger of driving on the highway. The employment did not expose the claimant to an increased risk of injury of the type actually sustained. Angleton v. Starkan, Inc., 250 Kan. 711, 828 P.2d 933 (1992).

Accordingly, the Appeals Board finds the claimant's accident did not arise "out of" nor "in the course of" his employment with the respondent.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the July 12, 1994 Order of Administrative Law Judge Steven J. Howard should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of April 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Keith L. Mark, Mission, KS
Mike Holzknecht, Lee's Summit, MO
Gary R. Terrill, Overland Park, KS
Frank Caro, Overland Park, KS
Steven J. Howard, Administrative Law Judge
George Gomez, Director